IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 440 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

VINODCHANDRA JAYANTILAL - DHOLAKIA & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT & 8 - Respondent(s)

==========

Appearance :

MR HARSHIT S TOLIA for Applicant(s) : 1 - 2.
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 5.
MR BA SURTI for Respondent(s) : 6 - 8.
MR SUNIL C PATEL for Respondent(s) : 9,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner have prayed

for an appropriate Writ, order or direction directing respondent Nos. 2 and 3 to forthwith register the FIR in pursuance to written complaint dated 24.02.2007 against the respondent No.4 to 9 and further respondent No.2 may be directed to carry investigation either personally or through some independent high rank police authority superior to respondent No.3.

2. It was the contention on behalf of the petitioners that inspite of application/ complaint dated 24.02.2007, respondent Nos. 2 and 3 have not inquired / investigated into the same and the same is not registered as FIR under Section 154 of the Criminal Procedure Code. Some further allegations are also made by way of additional affidavit.

3. An affidavit is filed by respondent No.4 - Police Sub Inspector, Botad Police Station pointing out that the application dated 24.02.2007 of the petitioners addressed to the Superintendent of Police, Bhavnagar was send to the Assistant Superintendent of Police. Pursuant to the instructions from the Superintendent of Police, Bhavnagar, Assistant Superintendent of Police had

inquired into the allegations made in the complaint and has found that the allegations made in the complaint are baseless and said application was made with an ulterior motive to harass the police as well as the journalist. It is submitted that Assistant Superintendent of Police by his report dated 28.03.2007 has send the report to the Superintendent of Police, Bhavnagar. It is submitted by the learned Additional Public Prosecutor that it is not that the application of the petitioner dated 24.02.2007 is not inquired and/or no investigation has been carried out.

4. Shri Tolia, learned Advocate appearing on behalf of the petitioners has submitted that inquiry done by the Assistant Superintendent of Police cannot be said to be investigation unless FIR is registered under Section 154 of the Criminal Procedure Code. It is submitted by him that as such application dated 24.02.2007 ought to have been registered as FIR and thereafter investigation ought to have been carried out. Therefore, it is submitted that the respondents were bound to register complaint as FIR as required under Section 154 of the Criminal Procedure Code.

5. Now looking to the facts and circumstances of the case and disputed question of facts, this Court is of the opinion that the petitioners are dissatisfied with the action / non action on the part of the police authorities more particularly, not registering FIR, in that case, remedy is available to the petitioners by way of filing private complaint before the learned Magistrate under Section 190 of the Criminal Procedure Code. The concerned learned Magistrate may either inquire into the allegations made in the complaint by himself and/or may direct other police authorities to hold inquiry under Section 156(3) and Section 202 of the Criminal Procedure Code.

6. In the facts and circumstances of the case, allegations and counter allegations and even the report of the Assistant Superintendent of Police, this Court is of the firm opinion that this is not a case to exercise powers under Article 226 of the Constitution of India. As held by Hon'ble Supreme Court in the case of ***All India Institute of Medical Sciences Employees' Union V/s. Union of India*** and Ors. reported in *(1996) 11 SCC 582* and the decision

of the Hon'ble Supreme Court in the case of ***Minu Kumari and anr. V/s. State of Bihar and Ors.*** reported in *(2006) 4 SCC 359*, the petitioners are relegated to file private complaint under Section 190 of the Criminal Procedure Code.

7. For the reasons stated above, the petitioners are relegated to file private complaint under Section 190 of the Criminal Procedure Code before the concerned Magistrate. As and when the complaint is filed the same shall be dealt with in accordance with law and on merits by the learned Magistrate after complying the provisions of Criminal Procedure Code. It is made clear that this Court has not expressed any opinion on merits of the case in favour of either parties. With these, present application is disposed of. Notice discharged.

[M.R.Shah, J.]

satish